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# **THEORIES OF SOVEREIGNTY AND CONSTITUTIONALISM**

## **INTENSIVE COURSE**

**Visiting Professors Andrew Arato and Jean Cohen**

**January 2009**

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FACULTY OF LAW  
UNIVERSITY OF TORONTO

## **Theories of Sovereignty and Constitution**

Professor Andrew Arato and  
Professor Jean Cohen  
Room FA1

January 5-16 2009  
University of Toronto Law School

### Blurb:

### Books

1. H.L.A. Hart, The Concept of Law
2. Hans Kelsen, General Theory of Law and the State (paper)
3. Carl Schmitt, Constitutional Theory (Durham: Duke University Press, 2008)
4. Carl Schmitt, Political Theology (Chicago: University of Chicago Press 2005)

## **1. The Crisis of the Classical Concept of Sovereignty: Three 20<sup>th</sup> Century Solutions**

- \*Carl Schmitt, Political Theology, pp. 5-52
- \*Hans Kelsen, "Sovereignty" from Stanley Paulson and Bonnie Litschewski Paulson (eds.), Normativity and Norms (Oxford: Clarendon, 1998), pp. 525-36
- H.L.A. Hart, The Concept of Law, Chapter IV, "Sovereign and Subject", pp. 50-78.

## **2. The Concept of Constitution and Constituent Power: Kelsen**

- \*Hans Kelsen, General Theory of Law and the State, 110-128, 258-261

## **3. The Concept of Constitution and Constituent Power: Schmitt**

- \*Carl Schmitt, Constitutional Theory, pp. 60-82, 97-135, 140-146, 150-158, 239-252

## **4. Sovereignty and International Law From Kelsen to Hart**

- \*Kelsen General Theory, 325-391
- \*Hart, "Kelsen's Doctrine of the Unity of Law", in H.L.A. Hart, Essays in Jurisprudence and Philosophy, (Clarendon), 309-342
- \*Hart, The Concept of Law, 79-123

## **5. Sovereignty and the Problem of Federations**

- \* Kelsen, General Theory of Law and State, 303-328
- \* Schmitt, Constitutional Theory, 382-407

## **6. The Question of a European Constitution: Is There a Constitution?**

\*Habermas, "Why Europe Needs a Constitution" (19-35);  
 \*Grimm "Treaty or Constitution?" (69-88) and  
 \*Brunkhorst, "A Polity without a State?" (88-107)  
 in Eriksen, Fossum and Menendez Developing a Constitution for Europe  
 \*Weiler, "On the Power of the Word: Europe's Constitutional Iconography" in ICON  
 Vol.1, No. 2&3, may 2005, 174-190

## **7. Constitutional Pluralism and Global Constitutionalism**

\*Miguel Poiãres Maduro, "Contrapunctual Law: Europe's Constitutional Pluralism in Action" (501-538) in Walker, ed, Sovereignty in Transition  
 \* Massimo la Torre Legal Pluralism as Evolutionary Achievement of Community Law  
 Ration Juris vol 12. no. 2 june 1999 182095  
 \*Bardo Fassbender, "Sovereignty and Constitutionalism in International Law" in Walker, ed., Sovereignty in Transition, 115-140;  
 \*Matthias Kumm, "The Legitimacy of International Law: A Constitutionalist Framework of Analysis", EJIL 15/5 2004  
 \*Jean Cohen, "A Global State of Emergency of the Further Constitutionalisation of International Law: a Constitutional Pluralist Approach" in Constellations15/4, 2008 (forthcoming)

### Recommended

\*Neil Walker, "The Idea of Constitutional Pluralism", in The Modern Law Review, Vol.65 May 2002, No.3, pp. 317-359  
 \*Miguel Poiãres Maduro, "Contrapunctual Law: Europe's Constitutional Pluralism in Action" (501-538) in Walker, ed, Sovereignty in Transition